

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF VIRGINIA  
ALEXANDRIA DIVISION**

HUMANSIZE CORPORATION,	)	
	)	
	)	Case No. 1:13-cv-535-CMH/IDD
Plaintiff,	)	
	)	
v.	)	
	)	
MASS ENGINEERED DESIGN, INC., et	)	
al.,	)	
	)	
Defendant	)	
	)	

**PLAINTIFF AND DEFENDANTS' JOINT MOTION TO  
MODIFY THE SCHEDULING ORDER**

Plaintiff Humansize Corporation (“Humansize”) and Defendants Mass Engineered Design, Inc. (“Mass”) and Jerry Moscovitch (“Moscovitch”) (collectively, “Defendants”) submit this joint motion seeking a sixty-day extension of the dates set for the completion of discovery and the Final Pretrial Conference in the Court’s Scheduling Order (Doc. No. 57). This extension will allow the parties to address three additional patents Defendants added to the litigation after the issuance of the Court’s Scheduling Order and the submission of the parties’ Amended Joint Proposed Discovery Plan (Doc. No. 61). Under the parties’ requested extension, the close of discovery would be set for January 14, 2014, and the Final Pretrial Conference would be set for January 20, 2014, or as soon thereafter as is convenient for the Court.

When the Court issued its Scheduling Order on July 18, 2013, there was only a single patent at issue in this litigation, U.S. Patent No. Re. 36,978. (*See* Doc. No. 57, Doc. No. 55 at Countercl. ¶¶ 4-8.) The Court held a Rule 16(b) conference on July 31, 2013, during which the parties reached agreement on all aspects of the discovery schedule. With the Court’s approval,

the parties filed an Amended Joint Proposed Discovery Plan on August 2, 2013, reflecting that agreement. (Doc. No. 61.)

On August 8, 2013, Defendants filed their First Amended Counterclaims, which alleged infringement of three additional patents that had not previously been part of the litigation, U.S. Patent Nos. Re. 42,091; 8,102,331; and 8,462,103. (Doc. No. 68 at ¶¶ 10-24.) Following the filing of Defendants' First Amended Counterclaims, Plaintiff contacted Defendants seeking to extend certain deadlines based on the addition of the additional patents. Subsequently, the parties met and conferred regarding possible extension of the case schedule to accommodate discovery and analysis regarding these additional patents. In order to accommodate Plaintiff's concerns and in order to avoid burdening the Court with contested motions, Defendants have agreed to the proposed modifications of the Scheduling Order set forth herein. Further, the parties have agreed that if the Court grants this Joint Motion and extends the case schedule by sixty (60) days, the parties will submit a Second Amended Joint Proposed Discovery Plan, modifying the discovery schedule as follows:

<b><u>PROPOSED AMENDED CASE SCHEDULE</u></b>		
<b><u>EVENT</u></b>	<b><u>CURRENT DATE</u></b>	<b><u>PROPOSED DATE</u></b>
Initial Pretrial Scheduling Conference	July 31, 2013	done
Protective Order (Stipulated or by Motion)	August 2, 2013	done
ESI Order	August 2, 2013	done

Rule 26(a)(1) Initial Disclosure	August 9, 2013	done
Hearing on Protective Order or ESI Order (if needed)	August 9, 2013	done
Initial Disclosure of Asserted Claims and Infringement Contentions	August 26, 2013	September 6, 2013
Amended Pleadings	Governed by Rule 15	Governed by Rule 15
Exchange List of Terms to be Construed	September 4, 2013	September 18, 2013
Exchange Constructions of Terms to be Construed	September 11, 2013	September 25, 2013
Meet and Confer Concerning Claim Terms	September 13, 2013	October 1, 2013
Preliminary Invalidity Contentions	September 13, 2013	October 10, 2013
Opening Claim Construction Briefs	September 20, 2013	October 10, 2013
Responsive Claim Construction Briefs	September 27, 2013	October 22, 2013
<i>Markman</i> Hearing	To be Scheduled by the Court	To be Scheduled by the Court
Deadline to Waive Privilege in Defense of Willfulness, Production of Documents within Scope of Waiver	October 11, 2013	November 11, 2013

Expert Disclosures for Party with Burden	October 11, 2013	November 26, 2013
Responsive Expert Disclosures	November 1, 2013	December 20, 2013
Fact and Expert Discovery Completion	November 15, 2013	January 14, 2014
Final Pretrial Conference, Exhibit Lists and Witness Lists to be Filed and Served	November 21, 2013, at 10:00 a.m.	January 20, 2014, or as soon thereafter as is convenient for the Court
Trial (Estimated at Five – Seven Days)	To be Scheduled by the Court	To be Scheduled by the Court

The parties submit that this modification of the case schedule will better enable all parties to investigate and present the new issues raised by the additional patents, without adding undue delay. Accordingly, the parties respectfully request that the Court grant this Joint Motion and extend the dates for the close of discovery and the Final Pretrial Conference by sixty (60) days, to January 14, 2014, and January 20, 2014, respectively.

Dated: August 19, 2013

/s/ Christopher B. Roth

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**CERTIFICATE OF SERVICE**

I hereby certify that on August 19, 2013, I will ELECTRONICALLY FILE the foregoing PLAINTIFF AND DEFENDANTS' JOINT MOTION TO MODIFY THE SCHEDULING ORDER with the Clerk of the Court using the CM/ECF system, which will then send a notification of such filing (NEF) to the following:

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